

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARTELL SMITH,)	
)	
Petitioner,)	Civil Action No. 2:22-235
)	
vs.)	United States District Judge
)	Cathy Bissoon
ORLANDO HARPER, <i>et al.</i> ,)	
)	
Respondents.)	United States Magistrate Judge
)	Maureen P. Kelly

MEMORANDUM ORDER

This case has been referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On July 19, 2022, Judge Kelly issued a Report (“R&R,” Doc. 2) recommending that the Court treat Plaintiff, Martell Smith’s, “Petition for Writ of Habeas Corpus” (“Petition,” Doc. 1) as a Petition under 28 U.S.C. § 2241 and dismiss it pre-service, pursuant to Rule 4 of the habeas corpus rules, as not cognizable as a federal habeas action. The R&R further recommends that the Court deny a certificate of appealability.

Objections to the R&R were due no later than August 5, 2022 (Doc. 2), but no objections were filed. After a *de novo* review of the Petition, together with the R&R, it is hereby ORDERED that Judge Kelly’s Report and Recommendation (Doc. 2) is ADOPTED as the opinion of the district court.

IT IS FURTHER ORDERED that the claims asserted are dismissed without prejudice to Petitioner’s ability to assert his claims in a properly supported § 1983 action or state habeas petition.

A certificate of appealability is DENIED, as jurists of reason would not disagree with the analysis of the Report.

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if Petitioner desires to appeal from this Order, he must do so within thirty days by filing a notice of appeal as provided in Federal Rule of Appellate Procedure 3.

This action shall be marked CLOSED.

IT IS SO ORDERED.

September 6, 2022

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via U.S. Mail):

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46430
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PRO SE